

Exhibit A

**Residual clause analysis of asserted crime-of-violence offenses listed in Jury
Instruction 44**

Operative Jury Instruction	Statutory Text	Reliance on residual clause of 18 U.S.C. § 924(c)(3)(B)
<p>44a—“Levying war against the United States and conspiring to do so, in violation of Title 18, United States Code, sections 2381 and 2384.” (As delivered to the jury at Dkt. No. 156 at 2318.)</p>	<p>18 U.S.C. § 2381 provides: “Whoever, owing allegiance to the United States, levies war against them or adheres to their enemies, giving them aid and comfort within the United States or elsewhere, is guilty of treason and shall suffer death, or shall be imprisoned not less than five years and fined under this title but not less than \$ 10,000; and shall be incapable of holding any office under the United States.”</p> <p>18 U.S.C. § 2384 provides: “If two or more persons in any State or Territory, or in any place subject to the jurisdiction of the United States, conspire to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, or to oppose by force the authority thereof, or by force to prevent, hinder, or delay the execution of any law of the United States, or by force to seize, take, or possess any property of the United States contrary to the authority thereof, they shall each be fined under this title or imprisoned not more than twenty years, or both.”</p>	<p>Section 2381 [AKA the federal treason statute] is a residual-clause offense because it can be violated without an act or element of physical force—namely, by giving aid or comfort to an enemy of the United States.</p> <p>Section 2384 [AKA the seditious conspiracy statute] is a residual-clause offense because it is a conspiracy statute, which can be violated without an act or element of physical force—namely, by entering into an illegal agreement to commit a crime without committing an affirmative act of violence. See, e.g., <i>United States v. Acosta</i>, 470 F.3d 132, 137 (2nd Cir. 2006) (conspiracy is a residual-clause offense); <i>United States v. Greer</i>, 939 F.2d 1076, 1099 (5th Cir. 1991) (same).</p>

<p>44b—“Attempting and conspiring to supply services to the Taliban, in violation of Title 50, United States Code, section 1705.” (As delivered to the jury at Dkt. No. 156 at 2318.)</p>	<p>50 U.S.C. § 1705 provides in relevant part: “It shall be unlawful for a person to violate, attempt to violate, conspire to violate, or cause a violation of any license, order, regulation, or prohibition issued under this title [50 USCS §§ 1701 et seq.]. . . .</p> <p>(c) Criminal penalty. A person who willfully commits, willfully attempts to commit, or willfully conspires to commit, or aids or abets in the commission of, an unlawful act described in subsection (a) shall, upon conviction, be fined not more than \$ 1,000,000, or if a natural person, may be imprisoned for not more than 20 years, or both.”</p>	<p>Section 1705 is a residual-clause offense because it can be violated without an act or element of force—namely, by providing services or entering into a conspiracy agreement without committing an affirmative act of violence.</p>
<p>44c—“Beginning, providing for, preparing a means for, and taking part in military expeditions and enterprises to be carried on from the United States against the territory and dominion of foreign states, districts, and peoples with whom the United States was at peace -- and conspiring to do so -- in violation of Title 18, United States Code, sections 371 and 960.” (As delivered to the jury at Dkt. No. 156 at 2318.)</p>	<p>18 U.S.C. § 960 provides: “Whoever, within the United States, knowingly begins or sets on foot or provides or prepares a means for or furnishes the money for, or takes part in, any military or naval expedition or enterprise to be carried on from thence against the territory or dominion of any foreign prince or state, or of any colony, district, or people with whom the United States is at peace, shall be fined under this title or imprisoned not more than three years, or both.”</p> <p>18 U.S.C. § 371 is the generic federal conspiracy statute and provides in relevant part: “If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.”</p>	<p>Section 960 [AKA the Neutrality Act] is a residual-clause offense because it can be violated without an act or element of force—namely, by furnishing money for an illegal military or naval expedition without otherwise participating in it or committing an affirmative act of violence.</p> <p>Section 371 is a residual-clause offense because it is a conspiracy statute that can be violated without an act or element of physical force—namely, by entering into an illegal agreement to commit a crime without committing an affirmative act of violence.</p>

<p>44d—“ Enlisting and entering oneself or another to go beyond the jurisdiction of the United States with intent to be enlisted and entered in the service of any foreign prince, state, colony, district, and people as a soldier – and conspiring to do so -- in violation of Title 18, United States Code, sections 371 and 959.” (As delivered to the jury at Dkt. No. 156 at 2318.)</p>	<p>18 U.S.C. § 959 provides in relevant part: “Whoever, within the United States, enlists or enters himself, or hires or retains another to enlist or enter himself, or to go beyond the jurisdiction of the United States with intent to be enlisted or entered in the service of any foreign prince, state, colony, district, or people as a soldier or as a marine or seaman on board any vessel of war, letter of marque, or privateer, shall be fined under this title or imprisoned not more than three years, or both.”</p> <p>18 U.S.C. § 371 is the generic federal conspiracy statute, and is reproduced above under Jury Instruction 44c.</p>	<p>Section 959 is a residual-clause offense because it can be violated without an act or element of physical force—namely, by enlisting or intending to enlist in a foreign army without doing any fighting or otherwise committing an affirmative act of violence.</p> <p>Section 371 is a residual clause offense because it is a conspiracy statute. See entry above under Jury Instruction 44c.</p>
<p>44e—“Conspiring to commit at any place outside the United States acts that would constitute the offense of murder or maiming if committed in the special maritime and territorial jurisdiction of the United States, in violation of Title 18, United States Code, section 956(a).” (As delivered to the jury at Dkt. No. 156 at 2318.)</p>	<p>18 U.S.C. § 956(a) provides in relevant part: “Whoever, within the jurisdiction of the United States, conspires with one or more other persons, regardless of where such other person or persons are located, to commit at any place outside the United States an act that would constitute the offense of murder, kidnapping, or maiming if committed in the special maritime and territorial jurisdiction of the United States shall, if any of the conspirators commits an act within the jurisdiction of the United States to effect any object of the conspiracy, be punished as provided in subsection (a)(2).”</p>	<p>Section 956(a) is a residual-clause offense because it is a conspiracy statute that can be violated without an act or element of physical force—namely, by entering into an illegal agreement to commit a crime without committing an affirmative act of violence.</p>

<p>44f—“Conspiring to damage or destroy specific property situated within a foreign country and belonging to a foreign government or to any political subdivision thereof with which the United States is at peace, and any railroad, canal, bridge, airport, airfield, and other public utility, public conveyance, and public structure and any religious, educational, and cultural property so situated, in violation of Title 18, United States Code, section 956(b).” (As delivered to the jury at Dkt. No. 156 at 2318-19.)</p>	<p>18 U.S.C. § 956(b) provides: “Whoever, within the jurisdiction of the United States, conspires with one or more persons, regardless of where such other person or persons are located, to damage or destroy specific property situated within a foreign country and belonging to a foreign government or to any political subdivision thereof with which the United States is at peace, or any railroad, canal, bridge, airport, airfield, or other public utility, public conveyance, or public structure, or any religious, educational, or cultural property so situated, shall, if any of the conspirators commits an act within the jurisdiction of the United States to effect any object of the conspiracy, be imprisoned not more than 25 years.”</p>	<p>Section 956(b) is a residual-clause offense because it is a conspiracy statute that can be violated without an act or element of physical force—namely, by entering into an illegal agreement to commit a crime without committing an affirmative act of violence.</p>
<p>44g—“Attempting and conspiring to provide material support and resources, knowing or intending that they are to be used in preparation for or in carrying out a violation of section 956 of Title 18, United States Code, in violation of Title 18, United States Code, section 2339[A].” (As delivered to the jury at Dkt. No. 156 at 2319.)</p>	<p>18 U.S.C. § 2339A provides in relevant part: “Whoever provides material support or resources or conceals or disguises the nature, location, source, or ownership of material support or resources, knowing or intending that they are to be used in preparation for, or in carrying out, a violation of [inter alia, 18 USC § 956] or in preparation for, or in carrying out, the concealment of an escape from the commission of any such violation, or attempts or conspires to do such an act, shall be fined under this title, imprisoned not more than 15 years, or both, and, if the death of any person results, shall be imprisoned for any term of years or for life. A violation of this section may be prosecuted in any Federal judicial district in which the underlying offense was committed, or in any other Federal judicial district as provided by law.”</p>	<p>Section 2339A is a residual-clause offense because it can be violated without an act or element of physical force—namely, by providing material support or resources, or entering into a conspiracy agreement without committing an affirmative act of violence.</p>

<p>44h—“Attempting and conspiring to provide material support and resources to Al-Qaeda, in violation of Title 18, United States Code, section 2339[B].” (As delivered to the jury at Dkt. No. 156 at 2319.)</p>	<p>18 U.S.C. § 2339B provides in relevant part: “Whoever knowingly provides material support or resources to a foreign terrorist organization, or attempts or conspires to do so, shall be fined under this title or imprisoned not more than 20 years, or both, and, if the death of any person results, shall be imprisoned for any term of years or for life. To violate this paragraph, a person must have knowledge that the organization is a designated terrorist organization (as defined in subsection (g)(6)), that the organization has engaged or engages in terrorist activity (as defined in section 212(a)(3)(B) of the Immigration and Nationality Act [8 USCS § 1182(a)(3)(B)]), or that the organization has engaged or engages in terrorism (as defined in section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 [22 USCS § 2656f(d)(2)]).”</p>	<p>Section 2339B is a residual-clause offense because it can be violated without an act or element of physical force—namely, by providing illegal material support or by entering into a conspiracy agreement without committing an affirmative act of violence.</p>
<p>44i—“Enlisting and engaging with intent to serve in armed hostility against the United States – and conspiring to do so in violation of Title 18, United States Code, sections 371 and 2390.” (As delivered to the jury at Dkt. No. 156 at 2319.)</p>	<p>18 U.S.C. § 2390 provides: “Whoever enlists or is engaged within the United States or in any place subject to the jurisdiction thereof, with intent to serve in armed hostility against the United States, shall be fined under this title or imprisoned not more than three years, or both.”</p> <p>18 U.S.C. § 371 is the generic federal conspiracy statute, and is reproduced above under Jury Instruction 44c.</p>	<p>Section 2390 is a residual-clause offense because it can be violated without an act or element of physical force—namely, by merely intending to serve in armed conflict against the United States without ever doing any fighting or otherwise committing an affirmative act of violence.</p> <p>Section 371 is a residual clause offense because it is a conspiracy statute. See entry above under Jury Instruction 44c.</p>